

Docket No. 162,366

The respondent and insurance carrier request the review of the Award of Special Administrative Law Judge William F. Morrissey dated October 26, 1994.

Claimant appeared by her attorney, Randy S. Stalcup of Wichita, Kansas. The respondent and its insurance carrier appeared by their attorney, Lyndon W. Vix of Wichita, Kansas. There were no other appearances.

The record considered by the Appeals Board is enumerated in the Award of the Special Administrative Law Judge.

The stipulations of the parties are listed in the Award of the Special Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

Claimant was raped on December 19, 1991, while making a sales call for the respondent. The Special Administrative Law Judge found claimant then developed post-traumatic stress disorder as a result of the rape and was entitled to permanent partial general disability benefits for the impairment related to that psychological disorder. Claimant attempted suicide in April 1992 after arguing with family members. The Special Administrative Law Judge found the suicide attempt a direct consequence of the rape and ordered the respondent to pay the related medical expense. The respondent and insurance carrier filed this request for review. They contend that claimant's psychological disorders are not compensable and argue they should not be required to pay the medical expense related to the suicide attempt. Those are the issues now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds, as follows:

For the reasons expressed below, the Award of the Special Administrative Law Judge finding claimant entitled to receive benefits based upon a twenty percent (20%) permanent partial general disability should be affirmed.

The evidence is uncontroverted the claimant was forcibly raped on December 19, 1991, while making a sales call for the respondent. During the rape, claimant injured her neck and back for which she subsequently received treatment. The record is silent whether the trauma to the neck and back resulted in permanent injury.

From January through August of 1992, claimant underwent counseling under the direction of board-certified psychiatrist Kaye Freeman Zwiacher, M.D. Dr. Zwiacher released claimant to return to work with the respondent. Because of the release, claimant voluntarily discontinued her therapy. When she returned to work for the respondent, claimant was only able to work for approximately six weeks due to anxiety and panic attacks. At the time of regular hearing in March 1994 claimant was not working.

As a result of the sexual attack, Dr. Zwiacher believes claimant has post-traumatic stress disorder that is directly traceable and attributable to the incident. Although Dr. Zwiacher acknowledges claimant had significant psychological stressors before the incident that caused major depression, she is definite the attack did not aggravate the underlying pre-existing problems and is equally certain the post-traumatic stress disorder is directly traceable to the rape. Further, Dr. Zwiacher believes claimant would have had impairment from this incident notwithstanding her pre-existing problems. The doctor believes claimant has experienced a thirty percent (30%) impairment of function as a result of the rape and based upon her belief claimant will have significant difficulties in her life thirty percent (30%) of the time.

The respondent hired psychologist Samuel N. Harrell, Ph.D. to evaluate claimant and testify in this proceeding. As a licensed clinical psychologist, Dr. Harrell is familiar with

post-traumatic stress disorder. Dr. Harrell believes claimant was predisposed to develop the disorder and would not rule out the diagnosis, but believes it would be of mild duration and intensity. Dr. Harrell believes claimant's psychological problems stem from a life-long depression pattern. Both Dr. Harrell and Dr. Zwiacher believe claimant has moderate symptoms of psychological disorder that affect her social, occupational and school functioning. Dr. Harrell rates claimant as having a five to ten percent (5-10%) impairment to the whole person due to her psychological problems.

The Appeals Board finds the sexual attack and rape constitutes personal injury as defined by the Workers Compensation Act, and that claimant experiences post-traumatic stress disorder directly traceable to the rape. As a result of the difficulties in assessing impairment for psychological disorders, the Appeals Board adopts the method and manner utilized by the Special Administrative Law Judge in averaging the opinions of Doctors Zwiacher and Harrell to find a twenty percent (20%) impairment rating.

The Appeals Board also agrees with the Special Administrative Law Judge that the claimant is entitled to permanent partial general disability benefits based upon the twenty percent (20%) functional impairment rating. Claimant contends she is entitled to either a permanent total disability or one-hundred percent (100%) permanent partial disability because she is allegedly unable to work. Claimant's contentions are not supported by the medical evidence. Claimant's treating psychiatrist, Dr. Zwiacher, released her to return to work in 1992, and Dr. Harrell testified claimant could return to work but might have difficulties returning to her former sales position. Under the Workers Compensation Act, claimant is entitled to permanent partial general disability benefits based upon the higher of functional impairment or work disability. See K.S.A. 1991 Supp. 44-510(e).

Claimant has established by a preponderance of the evidence that she has experienced a physical injury, together with symptoms of a psychiatric disorder, and that the symptoms are directly traceable to the injury as required by Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, 771 P.2d 557, rev. denied 245 Kan. 784 (1989).

Respondent argues the case of Followill v. Emerson Electric Co., 234 Kan. 791, 674 P.2d 1050 (1984) precludes claimant from receiving permanent partial disability benefits. However, the Appeals Board disagrees. In Followill the claimant sought benefits for psychological disorder which resulted when he came upon the grizzly scene of an accident involving a friend and co-worker. The case stands for the proposition that one must experience physical injury rather than witness one, in order to qualify for benefits under the Workers Compensation Act. In the case now before us, claimant did experience physical injury of a significant nature.

The finding of the Special Administrative Law Judge that the suicide attempt was a direct consequence of the rape should also be affirmed. As Dr. Zwiacher testified, there exists a high likelihood that someone will attempt to take their own life within one year of being raped or traumatized because they become unable to deal with situations they have been able to deal with in the past. When barraged with technical legal language, Dr. Zwiacher testified she believes the sexual attack caused claimant to be dominated by a disturbance of the mind of such severity to override her normal rational judgment. Dr. Zwiacher acknowledged that the pre-existing stressors played a part in the suicide attempt,

but not a major part. According to the doctor, the rape and post-traumatic stress disorder resulting from it were the primary factors which caused the suicide attempt.

The Appeals Board hereby adopts the findings and conclusions of the Special Administrative Law Judge set forth in the Award which are not inconsistent with the findings and conclusions set forth specifically herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey entered in this proceeding on October 26, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Wichita, Kansas
Lyndon W. Vix, Wichita, Kansas
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director